

§ 98.8

continuances that the examiner determines to be necessary and appropriate for fair resolution of the case, with due regard to the former employee's need for adequate time to prepare a defense and for expeditious resolution of allegations that may be damaging to that former employee's reputation.

(b) The following rights shall be granted to a former employee who requests a hearing under § 98.5(b):

(1) To represent oneself or to be represented by counsel.

(2) To introduce and examine witnesses and to submit physical evidence.

(3) To confront and cross-examine adverse witnesses.

(4) To present oral argument.

(5) To obtain a transcript or recording of the hearing on request from the official reporter upon payment of the fees fixed therefor.

(c) In a hearing under this part, the Federal Rules of Civil Procedure and Evidence do not apply. However, the examiner may make such orders and determinations regarding discovery, admissibility of evidence, conduct of examination and cross-examination, and similar matters the examiner deems necessary or appropriate to ensure orderliness in the proceedings and fundamental fairness to the parties.

§ 98.8 Decision by examiner.

(a) In a hearing under § 98.7 of this part, the Departmental counsel must establish a violation by a preponderance of the evidence.

(b) The examiner shall make a decision exclusively on matters of record in the proceeding and shall set forth in the decision:

(1) All findings of fact relevant to the matters at issue;

(2) All conclusions of law relevant to the matters at issue; and

(3) The sanction to be imposed, if any.

§ 98.9 Decision if hearing waived.

(a) If the former employee waives or, in accordance with § 98.5(b) of this part, is deemed to have waived a hearing under this part, the examiner shall, after review of the record as it exists, make a decision as to whether the former employee is in violation of 18 U.S.C. 207.

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(b) In a decision under paragraph (a) of this section, the requirements of § 98.8 of this part apply.

§ 98.10 Appeal.

(a) Within 30 working days after receipt of a decision issued under § 98.8 or § 98.9 of this part, either the Departmental counsel or the former employee may appeal the decision to the Secretary.

(b) In making a decision on an appeal, the Secretary shall consider only the evidence admitted during the prior proceeding and contained in the record of that proceeding.

(c) If the Secretary modifies or reverses the initial decision, the Secretary shall specify the findings of fact and conclusions of law that are different from those of the examiner.

§ 98.11 Final administrative decision.

The final administrative decision under this part shall be:

(a) The decision of the examiner under § 98.8(b), if there is no appeal under § 98.10;

(b) The decision by the examiner under § 98.9, if a hearing is waived or is deemed to have been waived and there is no appeal under § 98.10; or

(c) The decision of the Secretary on an appeal under § 98.10.

Subpart B—Administrative Sanctions

§ 98.12 Administrative sanctions.

(a) The Secretary, in decisions under § 98.10 of this part, and the examiner, in decisions under § 98.8 and § 98.9 of this part, may impose an administrative sanction against a former employee who, after a final administrative decision under this part, is found to be in violation of 18 U.S.C. 207.

(b) The administrative sanctions that may be imposed under subsection (a) of this section are:

(1) Prohibiting the former employee from making, on behalf of any other person except the United States, any formal or informal appearance before, or, with the intent to influence, any oral or written communication to, the Department of any of its administrations on any matter of business for a period not to exceed five years; or